IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 178 of 2006

JUGRAJ
V/S
SHOBH RAJ & ORS

Mr. KC SAMDARIYA, for the appellant / petitioner

Date of Order : 1.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant and perused the impugned judgments.

The appellant-plaintiff had filed a suit for eviction on the ground of reasonable and bonafide necessity, default, and subletting. According to the plaintiff, he requires the suit shop for his son Kanmal for carrying on cloth business. It was pleaded that the defendant has sublet part of the shop to Mohd.Yunus. It was also pleaded that the defendant has denied the title of the landlord. Inter-alia, on these grounds, eviction was prayed.

The learned trial Court found the defendant to be defaulter, and since the defendant had deposited the determined amount, and had also paid month to month rent thereafter, and the amount had been withdrawn by the plaintiff, he was given benefit of Section 13(6). Then regarding bonafide necessity, it was found that admittedly the plaintiff has two factories in the name and style of JK Dyeing and Sajjan Dyeing, and plaintiff and his son constitute joint Hindu family and live together, and that the owners of the factory JK Dyeing is the plaintiff's son Kanmal and Kanmal's wife Sushila, and the plaintiff himself. It was also found that the plaintiff has

constructed big building, and made it a public trust, which building include shops, which shops were let out for bank etc., and in that trust out of 11 trustees, 4 are family members of the plaintiff. Thus, it was found that the plaintiff's reasonable and bonafide necessity is not established. Then regarding subletting, it was found that there is no subletting, and in any case, if Mohd.Yunus was repairing watches on the open space available, it cannot be said that he was parted with possession. Then regarding denial of title of the landlord also, it was found that the shop was earlier mortgaged with Tejraj Khetmal, and therefore, if the defendant has given notice to Tejraj Khetmal, it cannot be said that he had intended to deny the title. Thus, the suit has been dismissed.

The learned lower Appellate Court has endorsed these findings. Significantly, regarding denial of title, it has been noticed by the learned lower Appellate Court that no argument was made on this issue No.6.

In my view, the finding on the question of reasonable and bonafide necessity, is a pure finding of fact, and in the totality of circumstances, is not vitiated on any of the grounds available under Section 100 CPC. Regarding subletting, the learned lower Appellate Court has recorded the finding relying upon the Division Bench judgment of this Court in Amir Ahmad Vs. Yusuf reported in 1985(1) WLN 550, and therefore, that finding does not require any interference.

It was sought to be contended that after depositing the determined amount, the tenant did not regularly deposit monthly rent month by month, and therefore, he could not be given benefit of Section 13(6).

Learned counsel was pointedly asked, as to the rent of which particular month was not deposited in time, and to that, learned counsel for the appellant expressed ignorance to specify. As against this, I find that both the learned Courts below have positively found that the rent

was deposited in time, and had been withdrawn by the appellant. Therefore, this ground also does not help the appellant.

The net result is that I do not find any force in the appeal, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

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